

RESOLUTION NO. 22-206

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH KEYSTONE FIELD SERVICES REGARDING THE ACQUISITION OF RIGHT OF WAY FOR THE FRONT BEACH ROAD CRA PROJECTS.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City an Agreement with Keystone Field Services, relating to the acquisition of right of way for the City's Front Beach Road Community Redevelopment Plan projects, and further authorizing the City Manager to further negotiate and draft an Agreement consistent with the scope of services and rates attached and presented to the Council as Exhibit A today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 25th day of August, 2022.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

**MASTER SERVICES AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH
AND KEYSTONE FIELD SERVICES, INC.
RELATING TO
PROFESSIONAL PROPERTY CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this ____ day of August, 2022, by and between **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation ("City") and **KEYSTONE FIELD SERVICES INC.** ("Consultant").

PREMISES

WHEREAS, City desires to have Consultant assist City with professional acquisition of property and property rights services, including the research and development of data and information to assist in litigation strategies, including potential contested takings involving eminent domain, providing ongoing relocation support services on behalf of the Project, providing ongoing right of way program management services, and being prepared to support general and special counsel for the City, assist staff, and if requested, attend settlement and court proceedings.

WHEREAS, City desires to employ Consultant for those purposes upon the terms and conditions in this Agreement, and Consultant is desirous of obtaining such employment and has represented that it has extensive experience in and is qualified and competent to perform such services upon said terms and conditions;

NOW, THEREFORE, in consideration of the following covenants, it is agreed:

1. SCOPE OF PROFESSIONAL SERVICES:

A. City retains Consultant to diligently, competently and timely perform such professional Consultant services as City may require, as said services may be authorized by City in individual tasks requested from time to time by City as set forth in Exhibit A. Upon any such request from City, Consultant will provide in writing a proposed fee. The proposed fee may be a: (i) stipulated sum; (ii) stipulated sum plus one or more specified allowances which may be authorized by City Manager or his designee; (iii) fee based on actual time expended; or (iv) any other compensation format that may be authorized by City. Unless otherwise expressly set forth separately in the applicable fee proposal, the proposed fee shall be assumed to include all compensation which City will owe Consultant for the subject services as set forth in Exhibit B, including all reimbursable expenses.

If accepted by City, the Consultant's proposal, as that proposal may have been modified by the parties, shall be incorporated into a task order, substantially in the form set forth as Exhibit C (each a "Task Order"). Each Task Order shall be numbered and upon its execution by both City and Consultant, shall be deemed to be incorporated into this Agreement. If a term in this Agreement conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict, but only for that Task Order.

B. Notwithstanding anything herein to the contrary, City is not required under this Agreement to authorize Consultant to perform any services and nothing herein shall be construed as entitling Consultant to any work under this Agreement, except and to the extent such work is specifically authorized hereafter by City in a properly executed Task Order.

C. Consultant represents to City that it has expertise in the type of professional services that will be required and all relocation support services will conform to 49 CFR Part 24, the Uniform Relocation Assistance and Real Property Acquisition Policies Act. City's consent or approval of any services provided by Consultant in no manner or way will relieve Consultant of its obligations and duties hereunder. Additionally, City's consent or approval of any services of Consultant shall not constitute a waiver of any rights City may have pursuant to this Agreement or by law. Notwithstanding any consents or approvals by City, Consultant remains responsible for all defects, errors, omissions or inconsistencies in its services performed pursuant to this Agreement.

2. COMPENSATION AND PAYMENT:

A. Consultant's total compensation for the services authorized by any particular Task Order shall be set forth exclusively in that Task Order.

B. In addition to its fee, if expressly authorized in the applicable Task Order, Consultant shall be reimbursed for its reasonable out-of-pocket expenses upon its submission of appropriate supporting and backup documentation reasonably acceptable to City. Consultant shall invoice City at actual costs for such authorized out-of-pocket costs including any subconsultant's compensation. Records of costs incurred under the terms of this Agreement, as well as all of Consultant's other project related documents and records, shall be maintained by Consultant and made available to City during the period of this Agreement, and for three (3) years after the final payment is made or such longer period of time as may be required by law. Copies of these documents and records shall be furnished to City without cost, and City or its agents shall be entitled to review, copy and audit all such documents and records during normal business hours. Consultant shall include a corresponding right of access, review, copying and audit by City to all project documents and records in all of Consultant's subconsultant agreements.

C. City reserves the right to direct changes to the services required of Consultant under this Agreement or any particular Task Order. Consultant will be compensated for any such changes directed or authorized by City as set forth in Section 6.

D. At the end of each month during which a Task Order shall be outstanding, Consultant shall submit a separate invoice for services rendered during that month with respect to that Task Order as follows:

- 1) Where a stipulated sum is specified, City shall pay Consultant in monthly installments based upon the percentage of satisfactory completion. In support of payment, Consultant shall submit monthly a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.
- 2) Where fees are computed on a time-incurred basis, the City shall pay Consultant monthly in arrears upon receipt of an itemized statement certified by Consultant in form and detail reasonably acceptable to City.
- 3) If authorized under the applicable Task Order, reimbursable expenses reasonably incurred shall be included in the Consultant's monthly statement of services with such supporting documentation as may be reasonably required by Owner to substantiate the reimbursable expenses.
- 4) Notwithstanding anything in the Agreement or any Task Order to the contrary, City reserves the right to withhold payment to Consultant in part or in full to the extent reasonably necessary to protect City's interests.
- 5) Consultant shall be required to provide such supporting documentation for its invoice as may be required by City.

3. **SCHEDULE:** The time schedule for Consultant's performance of the required services under any particular Task Order, shall be set forth in that Task Order.

4. **CITY'S RESPONSIBILITY:** As reasonably requested by Consultant, City shall furnish Consultant with such existing data, surveys, legal descriptions, plans, profiles, and other information available and useful in connection with the subject Task Order that is within City's possession and can be located, which shall be returned to City upon the completion of the services to be performed by Consultant, unless such data, surveys, legal descriptions, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by Consultant and the originals returned to City. Unless otherwise noted, the Consultant shall be entitled to rely upon the accuracy and completeness of any information supplied by the City.

5. CITY'S DESIGNATED REPRESENTATIVE: It is understood and agreed that City designates the CRA Program Manager or his designated representative or its legal counsel to represent City in all technical matters pertaining to and arising from the work and performance of this Agreement. Provided however, neither the CRA Program Manager nor his designated representative shall have the authority to authorize any verbal or written orders or instructions that would have the effect, or be interpreted to have the effect, of adjusting, modifying or changing in any way whatsoever 1) the time to complete any of Consultant's required services, 2) the amount of compensation City is obligated or committed to pay Consultant, or 3) the scope or quality of services to be provided and performed by Consultant. The CRA Program Manager and/or his designated representative and/or legal counsel shall have, but not be limited to, the following responsibilities:

A. Examination of all reports, sketches, drawings, cost estimates, proposals and other documents presented by Consultant, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of Consultant.

B. Transmission of instructions, receipt of information, interpretation, and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.

C. Give prompt written notice to Consultant whenever the CRA Program Manager or his designated representative or legal counsel observes or otherwise becomes aware of any defects or changes necessary in the project.

6. ADDITIONAL SERVICES/CHANGES IN SCOPE:

A. As referenced in Section 2.C of this Agreement, City has retained the right to make changes to the scope of work authorized by any Task Order. Accordingly, from time to time, at City's option and in City's sole discretion, Consultant may be directed or authorized to perform additional services ("Additional Services") City deems necessary or convenient with respect to any particular Task Order that has been issued. Provided however, City will not be responsible for the costs of any Additional Services commenced by Consultant without City's express prior written approval or direction. If Consultant reasonably believes that any services required by City (including any changes directed by City) constitutes Additional Services, then Consultant shall provide prompt written notice to City of any such circumstance before commencing such services. In the event City disagrees with Consultant's notice of Additional Services and City directs Consultant to proceed with such services, Consultant must submit a written claim to City within seven (7) calendar days of City's directive to proceed. Failure to obtain either City's prior written approval for Additional Services or failure to submit a written claim within said seven (7) day period after being directed by City to proceed with services that Consultant believes constitutes Additional Services, waives Consultant's claim that it performed Additional Services and instead such services will be deemed to be part of the original services otherwise required of Consultant under the applicable Task Order. The compensation

for Additional Services will be an amount mutually agreed upon or if the parties fail to reach agreement on the compensation then Consultant's compensation will be based upon the rates established in the attached Exhibit B and the actual time and out-of-pocket costs incurred by Consultant to provide such Additional Services as reasonably determined by City.

B. Consultant hereby waives all claims for consequential and indirect damages against City arising out of or relating to this Agreement.

7. TERMINATION:

A. Either party hereto shall have the right and option to terminate this Agreement as set forth in this section. City shall have the right to terminate this Agreement and any Task Order in effect, in whole or in part, without cause upon seven (7) calendar days written notice to Consultant. Consultant shall have the right to terminate this Agreement in its entirety without cause upon ninety (90) calendar days written notice to City with respect to future services and work not already authorized under any particular Task Order; provided however, any services to be performed by Consultant under a previously issued Task Order shall proceed to completion unless otherwise expressly terminated by City. Nothing in this Section shall be construed to allow Consultant to terminate any Task Order previously issued and in effect prior to Consultant's notice of termination for convenience. In the event of a termination for convenience by City, Consultant's sole and exclusive recovery against City shall be limited to that portion of Consultant's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Consultant that are directly attributable to the termination. In the event of such termination for convenience by Consultant, Consultant's sole and exclusive recovery against City shall be limited to that portion of Consultant's compensation earned through the date of termination for work performed plus any withheld retainage. In no event shall Consultant be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profit on work not performed.

B. Consultant shall be considered in default of this Agreement and such default shall be considered cause for City to terminate this Agreement in whole or in part upon written notice to Consultant if Consultant fails to diligently, competently and timely perform any of the work, fails to cooperate with others associated with the work, or otherwise fails to perform or observe any material covenant, representation or warranty contained in this Agreement. If City determines that Consultant is in default, Consultant shall have seven (7) calendar days following receipt by Consultant of said written notice to remedy and cure the default. If such default is not remedied or cured by Consultant within those seven (7) calendar days, then City may terminate this Agreement in whole or in part. In the event of such termination by City, Consultant's sole and exclusive recovery against City shall be

limited to that portion of Consultant's compensation earned through the date of termination, plus any withheld retainage; provided, however, no such amounts shall be due and payable until such time as City determines its damages as a result of such default by Consultant. City has the right to off set all damages it suffers as a result of Consultant default from any and all amounts it may owe Consultant under this Agreement and any Task Order. Further, in the event such damages exceed the amount owed Consultant, Consultant shall pay City such excess within ten (10) days of Consultant's receipt of written demand from City for such excess amount.

C. City shall be considered in default of this Agreement and such default shall be considered cause for Consultant to terminate any particular Task Order upon written notice to City if City fails to perform or observe any material covenant required of it with respect to such Task Order. In no event does Consultant have the authority to terminate any Task Order for which the subject default does not apply. If Consultant so notifies City in writing that City is in default, City shall have thirty (30) calendar days following receipt by City of said written notice to remedy and cure the default. If such default is not remedied or cured by City within those thirty (30) calendar days, then Consultant may terminate the subject Task Order. In the event of such termination by Consultant, and subject to the terms of this Agreement, Consultant shall be entitled only to the same rights and recovery provided to it as a result of a termination for convenience by City per Section 7.A above.

D. If, after notice of termination of this Agreement or any Task Order or any portion of either by City as provided for in Section 7.B above, it is determined for any reason that City wrongfully terminated this Agreement or any Task Order or any portion of either or otherwise was not entitled to terminate for cause, then the notice of termination given pursuant to Section 7.B above shall be deemed to be the notice of termination for convenience by City provided for in paragraph 7.A above and Consultant's remedies against City shall be the same as and limited to those afforded Consultant under Section 7.A above.

E. Upon any termination and at no additional cost to City, Consultant shall deliver to City all papers, records, documents, drawings, calculations, models, and other materials in Consultant's possession or under its control arising out of or relating to this Agreement as directed by City. The delivery of all such items to City being a condition precedent to any further payment obligations of City under this Agreement. Consultant may make a copy of any or all such items for its file, at its own cost and expense.

8. TERM: Unless terminated sooner pursuant to the provisions of the "TERMINATION" clauses contained in Section 7 of this Agreement, and subject to the availability of appropriated funds, this Agreement shall take effect immediately upon its execution by the parties, and shall continue thereafter for a term of 5 years or the completion of all outstanding Task Orders, whichever is later; provided, however, the term of this Agreement shall be amendable and renewable by City, at its sole discretion, for continuation of the term related services on an as-needed basis.

9. INDEMNIFICATION:

A. To the maximum extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its officers and employees, of any and all claims, actions, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Consultant or any person employed or utilized by Consultant in the performance of services hereunder. The provisions of this Section 9 shall survive termination of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party described in this paragraph.

B. The duty to defend under this Section 9 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Consultant, City or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Consultant. Consultant's obligation to indemnify and defend under this Section 9 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Notwithstanding the foregoing and to the extent Consultant actually defends City and City is ultimately found responsible for such claims, City shall reimburse Consultant its defense costs, including attorneys' and expert fees, incurred by Consultant in providing a defense to City and its employees, but only to the extent of the City's culpability.

10. INSURANCE:

A. Consultant shall procure and maintain during the life of this Agreement insurance of the following types:

- 1) Liability insurance including, but not limited to:
 - a) Independent Contractor's Liability;
 - b) Contractual Liability;

The minimum primary limits shall be no less than \$1,000,000/\$2,000,000 Personal Injury Liability, and no less than \$1,000,000 Property Damage Liability, or \$2,000,000 Combined Single Limit Liability, or higher limits if required by any Excess Liability Insurer. City shall be named as additional insureds pursuant to an additional insured endorsement on ISO Form 20 10 10 01 (or superseding form) providing comprehensive general liability coverage for completed operations in addition to on-going operations.

B. **Certificates of Insurance:** Prior to commencement of work on any Task Order, Consultant shall furnish to City original, current certificates of all insurance required by this agreement, providing thirty (30) days prior written notice of any change in limits or scope of coverage, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL DELIVER THIRTY (30) DAYS PRIOR NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN." All insurance required by this agreement shall be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of A-, or otherwise approved in advance in writing by City. If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with City thirty (30) days prior to the renewal date.]

11. **NEGOTIATION DATA:** Consultant hereby certifies, covenants, and warrants that hourly rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.

12. **OWNERSHIP OF DOCUMENTS:**

A. It is understood and agreed that all documents, including detailed reports, plans and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by Consultant in connection with its services hereunder ("Project Documents") shall always be the property of City and shall be delivered to City promptly, at Consultant's sole expense and without lien, upon City's request or termination of this Agreement by lapse of time or otherwise. Consultant hereby assigns to City all rights, including all copyrights, to the Project Documents. Consultant acknowledges and agrees that all Project Documents shall be deemed to be works made for hire, and all right, title, and interest in and to the Project Documents shall be vested in City, and Consultant will take all actions necessary to secure for City all such right, title, and interest. Consultant warrants that all materials comprising the Project Documents are original with the Project and have not been copied or derived from any other material without the express consent of the owner, proprietor, and copyright holder of that other material, and are not subject to any other claim of copyright by any other person. Consultant shall obtain any and all licenses necessary for the production and preparation of the Project Documents including, without limitation, licenses for the use of any material subject to copyright by other parties. Consultant shall assign to City any and all rights, including any copyrights, in the Project Documents that Consultant may possess, now or in the future, and Consultant will claim no rights adverse to City in the Project Documents. Consultant, at its own expense, may retain copies of the Project Documents for its files and internal use. Consultant shall not be liable for any use by City of the Project Documents to the extent they are modified without written approval of Consultant.

B. City shall not use Consultant's formal report on any other project unless City notifies Consultant of its intended use, and obtains the Consultant's written consent to such use.

C. Consultant warrants to City that it has full right and authority to grant to City all rights in the Project Documents as provided for in this Section 12. Further, Consultant hereby consents to City's use (including any use by any replacement Consultant retained by City) of the Project Documents to complete a project following any termination of Consultant hereunder or to perform any additions to or renovations of a Project.

D. When transferring data in electronic media format, Consultant makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of the Agreement. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. The original hard copy of the documents containing the professional Consultant's seal shall take precedence over the electronic documents.

13. WORK COMMENCEMENT/PROGRESS/DELAYS:

A. The services to be rendered by Consultant as to any particular Task Order shall commence upon execution of that Task Order and Consultant's receipt of written notice to proceed with such services from City Manager or his designee.

B. Consultant agrees to abide by the schedule for performance of the contracted services as set forth in the applicable Task Order. City will be entitled at all times to be advised in writing at its request as to the status of the work being done by Consultant, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve Consultant of liability for delays or other damages as provided by law.

C. Notwithstanding anything in this Agreement or any Task Order to the contrary, no interruption, interference, suspension or delay in the commencement or progress of Consultant's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Consultant of its duty to perform or give rise to any right to damages or additional compensation from City. Consultant expressly acknowledges and agrees that it shall receive no damages for delay. In the event there are delays on the part of City or any applicable regulatory agencies as to the approval of any of

the plans, permits and drafts of special provisions submitted by Consultant or any other delays not due to the fault or neglect of Consultant, which delay the applicable schedule completion date, Consultant's sole remedy, if any, against City shall be an equitable extension of time for such delays. Provided, however, if the delay is solely due to City's fault of neglect and the services to be provided hereunder have been delayed for a total of ninety days, Consultant's compensation shall be adjusted only to reflect the actual incremental increase in out-of-pocket costs experienced by Consultant, if any, as a result of such delays. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

D. Consultant shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. Consultant agrees that its staff, subconsultants, and subcontractors who will perform any services for the project are subject to City's reasonable approval and must be identified in each Task Order. None of the staff, subconsultants, and subcontractors identified in a Task Order shall be removed or replaced by Consultant without City's prior written approval (such approval not to be unreasonably withheld), and if so removed shall be immediately replaced with a person or firm reasonably acceptable to City. Consultant is liable for all acts and omissions of its staff, subconsultants, and subcontractors.

14. STANDARDS OF CONDUCT:

A. Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

B. Consultant covenants that neither it nor any of its employees presently has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

C. Standards of Conduct-Conflict of Interest-Consultant agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: In the performance of its services hereunder, Consultant and all of its work product shall comply with all Federal, State, and Local laws, rules regulations and ordinances applicable to the work or payment

for work thereof. Consultant shall not discriminate on the grounds of race, color, religion, sex, or national origin in its performance of work under this Agreement.

16. ASSIGNABILITY: Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of City.

17. INDEPENDENT CONTRACTOR: Consultant is and shall remain an independent contractor and not an employee of City.

18. CONTROLLING LAW AND VENUE: All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the State Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida.

19. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to the subject matters. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. Any alterations or variations of the terms of this Agreement shall not be valid unless made in writing and signed by the parties. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then, notwithstanding, the remainder of the Agreement shall remain in full force and effect.

20. ATTORNEY'S FEES: If either party is required to institute or defend against the other party any legal proceedings in connection with this Agreement, the prevailing party shall be entitled to its costs thereof, together with reasonable attorney's and paralegals' fees.

21. NO WAIVER: No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

22. COOPERATION: Consultant acknowledges that the City's projects are generally a multidisciplinary effort which require cooperation and collaboration with numerous consultants, engineers, construction managers, contractors, and counsel assisting and advising City, as well as coordination with utilities, other governmental agencies and all

directions from City Manager and City Engineer. Accordingly, Consultant agrees to cooperate with all such other parties to advance the best interests of City and the project.

23. MEDIATION: City and Consultant agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Bay County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. If the parties are unable to agree upon a mediator, either party shall request the appointment of a mediator by the Chief Judge of the Circuit Court, Fourteenth Judicial Circuit in and for Bay County, Florida. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Mediation is a condition precedent to filing any law suit or commencing other legal action. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This Section 23 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents as of the year and date first above written.

**CITY OF PANAMA CITY BEACH,
FLORIDA, a municipal corporation**

By: 
Drew Whitman, City Manager

ATTEST:


Lynne Fasone, City Clerk

KEYSTONE FIELD SERVICES, INC.

**WITNESS
PRINT NAME:**

**By:
Its:**

**WITNESS
PRINT NAME:**

PCB/ Keystone
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EXHIBIT A

SCOPE OF SERVICES

- 1. SCOPE OF SERVICES.** This engagement serves to accomplish the acquisition of property and property rights from various property owners by voluntary acquisition and/or in support of acquisition by eminent domain to accomplish the associated objectives of the Front Beach Road redevelopment plan, segments 3.0, 4.1, 4.2 and 4.3 (generally the "Project"). The general tasks associated with this Project include:

Task 1. Assist City staff and counsel as directed in performance of the prerequisites including correspondence with the City, property owners and property owner representatives as required to acquire needed property rights to accomplish voluntary acquisitions, and in support of acquisitions under eminent domain.

Task 2. Use the Approved Consultant to research and develop data and information to assist City management, staff and general and special counsel in litigation strategies involving making offers to purchase property with an eye toward anticipated litigation, including potential contested takings involving eminent domain. Such specific tasks to include but not limited to:

- (a) Due diligence to include review of ownership information, parcel information, parcel sketches and right of way maps (if available) regarding all parcels for which property rights are needed, including the fee parcels;
- (b) **Preparation and delivery of owner notifications and real estate offers;**
- (c) Negotiation of fee parcels, temporary construction easements (TCE's), perpetual easements, and license agreements;
- (d) Preparation and delivery of Agent's Price Estimates (APE's), where APE's present an industry term or vernacular for a means to obtain data, information and analysis to estimate just and fair compensation for property rights to reasonably, fairly, and efficiently negotiate for acquisition of such parcels or use rights);
- (e) Negotiations with property owners;
- (f) Preparation and delivery of settlement packages;
- (g) Preparation and delivery of suit packages per City Counsel requests;
- (h) Telephone and e-mail communication and/or meetings with stakeholders or their attorneys;
- (i) Responding to written requests for information;
- (j) Progress tracking and reporting.

Task 3. Use the Approved Consultant to provide ongoing relocation support services on behalf of the Project in accordance with 49 CFR Part 24, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act). Such specific tasks to include but not limited to:

- (a) Preparation and delivery of documents to ensure compliance with the Uniform Act, thereby protecting existing federal funding (if any), and future federal funding that may be pursued, such as: updates to the City's Procedures Manual to serve as a

guidance document and documentation manual for implementing a Relocation Program in conformance with the Uniform Act; updates to the Appeal Procedure that meets the requirements of 49 CFR 24; and, the development of Relocation Needs Assessment Surveys (NAS) as applicable to the Project and as required by the Uniform Act to identify the relocation impacts of displaced households and businesses and set their eligibilities for relocation benefits under the Uniform Act.

- (b) Administer a Relocation Program on behalf of the City, to include but not limited to:
 - i. Ensuring all applicable laws are adhered to;
 - ii. Deriving relocation cost estimates;
 - iii. Developing relocation strategy and schedule;
 - iv. Minimizing the impacts on displaced individuals and businesses;
 - v. Meeting project budget and schedule;
 - vi. Coordinating activities with the Project stakeholders and with overseeing government agencies, as applicable to ensure adherence to the Uniform Act.
- (c) Providing Ongoing Advisory Services;
- (d) Issue and Delivery of All Uniform Act Official Notices;
- (e) Processing of Claim Packages;
- (f) Release of Warrants as required to ensure compliance;

Task 4. Use the Approved Consultant to provide ongoing right of way program management services to assist the City and the interim CRA Manager in providing efficient administration of the right of way program. **Such specific tasks to include but not limited to:**

- (a) Providing right of way design support as requested to identify and **achieve common understanding of which right-of-way practices will better serve the City's objectives;**
- (b) Maintain the Project's right of way production management and tracking system;
- (c) Provide ongoing client interaction and communication to ensure mutual understanding of project scope, progress, and status;
- (d) Regularly confer and work cooperatively with, advise, and take direction from City staff and counsel in employing such research, preparation, and assistance as required for filing of suit packages or achieving settlement, and address variable participation by individual owners, if necessary;
- (e) Coordination of critical vendor services as requested by the City and counsel, to include but not limited to, appraisal and appraisal review services and title search and title commitment work.

Task 5. The Approved Consultant must be prepared to support general and special counsel for the City, assist staff, and if requested attend settlement and court proceedings.

EXHIBIT B

2. APPROVED CONSULTANT COMPENSATION. Fees are authorized based upon the hourly rates set as follows:

<u>Position #</u>	<u>Position</u>	<u>Hourly Rate</u>
1.	Principal Acquisition & Relocation Specialist/Program Manager	\$208.70/Hour
2.	Senior Acquisition & Relocation Specialist/Production Manager	\$192.55/Hour
3.	Acquisition/Relocation Specialist	\$159.01/Hour

These rates will be in effect as follows:

For services rendered on Front Beach Road Segment 4.3 – as of July 1, 2022.

For services rendered on Front Beach Road Segments 3, 4.1, and 4.2 – as of October 1, 2022.

~~The Approved Consultant's base (minimum) monthly compensation shall be equal to one hundred and twenty hours each for position #1 and position #2 for the duration of the Project. Position #3 will be on an as needed basis.~~

DeW
8-30-22

Preparation and delivery of APE's for fee parcels, TCE's, perpetual easements and license agreements will be provided at \$545.00 per APE (excluding due diligence and travel time which will be billed on an hourly basis).

These rates and fees will not change except as provided above for an annual escalation or upon notice and acceptance by the City.

Professional services by the Approved Consultant shall be tracked on an hourly basis, per Project, billed at the hourly rates provided for herein periodically, but not more often than monthly, subject to the provisions provided below. The Approved Consultant shall be entitled to an annual escalation of the hourly rates. Such increases shall be based on the Consumer Price Index for Urban Wage Earners (CPI-W) as published by the US Bureau of Labor Statistics. Additionally, the Approved Consultant is entitled to reimbursement for actual or reasonably estimated costs incurred, but not exceeding that provided by Chapter 112, Florida Statutes. The City will pay all such reasonable costs incurred by the Approved Consultant on a monthly basis. All invoices must provide appropriate reimbursement backup and detail required by the City for audit purposes. For ease of coordination, review and administration, invoicing will include a separate tracking of professional services per each segment of the Project.

EXHIBIT C

**COMBINED TASK ORDER AND
NOTICE TO PROCEED**

TASK ORDER NO. _____ DATE _____, 202__

Reference is made to that certain MASTER SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND KEYSTONE FIELD SERVICES, INC. RELATING TO PROFESSIONAL PROPERTY CONSULTING SERVICES dated _____, 2022, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

1. Pursuant to the Agreement, Consultant agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, to assist the City's acquisition of land to effect improvements to certain transportation corridors within the City.

2. Consultant's compensation shall be paid in monthly installments as specified in the Agreement. Consultant's total compensation for the services to be provided under this Task Order shall be determined as follows:

[]

Reimbursable Expenses:

If reimbursable expenses are to be paid hereunder, such expenses must be specifically AUTHORIZED AND IDENTIFIED in this section. Should no reimbursable expenses be particularly set forth in this section, the parties agree that reimbursable expenses shall be \$0.

Consultant's total compensation, including reimbursable expenses, if any, will be established in a stipulated sum not to exceed \$_____.

3. Work shall begin on _____, 202__, and shall be substantially completed by _____, 202__. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this Task Order by both Consultant and City, Consultant is directed to proceed

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

By: _____

Its: _____

Date: _____

PCB/ Keystone
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CITY OF PANAMA CITY BEACH, FL

By: Drew Whitman, City Manager
Date:

ATTEST:

Lynne Fasone, City Clerk